

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2350

IN THE MATTER OF:

Served July 16, 1982

Application of JAMES M. SMITH,)
INC., for Special Authorization to)
Perform Charter Operations Pursuant)
to Contract -- National Institutes)
of Health)

Case No. CP-82-04

By Order No. 2348, served June 30, 1982, pursuant to Commission Regulation No. 70-07, the above-captioned application, as amended, was granted. Underlying the grant were findings (a) that the group to be transported is a defined class of passengers meeting the definition of a "qualifying association" 1/ and (b) that applicant is fit, willing and able to perform the proposed transportation properly and to comply with the requirements of the Compact and the rules, regulations and orders of the Commission thereunder.

On July 12, 1982, protestant Beltway Limousine Service, Inc., filed an application for reconsideration of Order No. 2348, asserting in great detail that finding "(a)" is erroneous and that the proposed transportation does not conform to the provisions of Regulation No. 70. 2/ Applicant's reply is not due until July 19, 1982, but, because the error alleged (1) involves only an interpretation of our Regulation and (2) inasmuch as a prompt resolution of this question will benefit all parties, particularly National Institutes of Health, the contractor, and the persons requiring transportation, we shall dispose of the application for reconsideration on an expedited basis.

Regulation No. 70-01 states as pertinent that

This regulation shall apply to . . . transportation
for hire of employees, trainees, students, members of
qualifying associations and persons traveling on

1/ See Regulation No. 70-02(d).

2/ International Limousine Service, Inc., which also filed a protest, has notified the staff of the Commission that it no longer opposes a grant of the application.

official business . . . pursuant to contract with an employer, school, qualifying association or government agency.

A qualifying association is then defined as "a voluntary association . . . of individuals or corporations having a continuing common interest and a common area, for purposes of this regulation, of origin and destination." 3/

National Institutes of Health is a part of the United States Department of Health and Human Services. Clearly, NIH is a government agency, 4/ not an individual or a corporation. Hence, NIH cannot be considered either as a qualifying association in its own right or as a member of a qualifying association.

The persons to be transported are described by NIH merely as "patients/outpatients [and] their parents and/or guardians." 5/ Only to the extent that the term patient implies that there is a common interest in receiving medical treatment may any bond among the passengers be inferred. It is not alleged that there is any charter, constitution or similar document establishing this class of individuals as an association.

Assuming, without deciding, that the persons to be transported are a "group" and that all members have consented to have NIH enter into a single contract for their transportation, 6/ such facts would be insufficient to establish that an association exists. Both the everyday meaning of the word "association" and its use as a legal term involve the joining together of individual entities into an organization characterized by a shared interest or purpose. Here, it is not shown that there is any joining together of the passengers. The only "joining" is between NIH on the one hand, and, on the other, individual patients for the provision of medical services.

3/ See fn. 1.

4/ See Regulation No. 70-02(c).

5/ The description of certain physical or emotional characteristics of these persons set forth in the proposed contract between applicant and NIH is irrelevant to establishing their classification for transportation purposes.

6/ See Regulation No. 51-06.

Moreover, Regulation No. 70 requires that a contract for transportation of members of a qualifying association be with the qualifying association itself -- not with a third party such as a government agency. ^{7/} Absent such a requirement, there is no guarantee that a transportation contractor would have sufficient incentive to insist that a carrier be responsive to the needs of the transportation users.

Of the permissible contracts under Regulation No. 70, only that of a government agency arranging for a person traveling on official business might be involved in applicant's proposal. There is, however, absolutely no evidence of record indicating that the patients and their companions meet the requirements of Regulation No. 70-02(e).

THEREFORE, IT IS ORDERED:

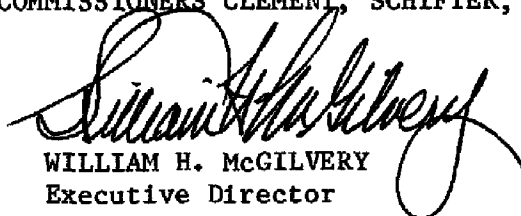
1. That the application for reconsideration of Beltway Limousine Service, Inc., is hereby granted.

2. That James M. Smith, Inc., is hereby directed to file with the Commission, within 10 days from the date of service hereof, a notarized original and four copies of its evidence, if any, that the persons to be transported under the involved contract are those traveling on official business with National Institutes of Health within the meaning of Regulation No. 70-02(e) and shall simultaneously serve a copy of such pleading on counsel for Beltway Limousine Service, Inc.

3. That Beltway Limousine Service, Inc., is hereby directed to file its rebuttal to such evidence, if any, within 5 days after the date of filing of the pleadings directed in the preceding paragraph.

4. That the Commission shall retain jurisdiction to determine this application following receipt of such pleadings as may be filed within the times prescribed.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director

^{7/} Cf. Order No. 2004, served June 20, 1979, pp. 13-14.